



**[BILLING CODE: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**[File No. 152 3015]**

**TES Franchising, LLC; Analysis of Proposed Consent Order to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

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**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

**DATES:** Comments must be received on or before May 7, 2015.

**ADDRESSES:** Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/tesfranchisingconsent> online or on paper, by following

the instructions in the Request for Comment part of the **SUPPLEMENTARY**

**INFORMATION** section below. Write “TES Franchising, LLC, Consent Agreement; File No.

1523015” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/tesfranchisingconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “TES Franchising, LLC,

Consent Agreement; File No. 1523015” on your comment and on the envelope, and mail your

comment to the following address: Federal Trade Commission, Office of the Secretary, 600

Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Jessica Lyon, Bureau of Consumer Protection, (202) 326-2344, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 7, 2015), on the World Wide Web at: <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 7, 2015. Write “TES Franchising, LLC, Consent Agreement; File No. 1523015” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or

foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR § 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).<sup>1</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/tesfranchisingconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “TES Franchising, LLC, Consent Agreement; File No. 1523015” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania

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<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR § 4.9(c).

Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 7, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

#### **Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, a consent agreement applicable to TES Franchising, LLC ("TES").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that TES made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union and the U.S. and Switzerland (collectively, "Safe Harbor Frameworks") and concerning the handling of consumer disputes relating to the Safe Harbor Frameworks. The proposed complaint also alleges that TES made false or misleading

representations to the effect that it was a current licensee of the TRUSTe self-regulatory program.

The Safe Harbor Frameworks allow U.S. companies to transfer data outside the EU and Switzerland consistent with European law. To join the Safe Harbor Frameworks, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and related requirements that have been deemed by the European Commission and Switzerland as providing “adequate” privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Among other things, the enforcement principle requires companies to provide a readily available and affordable independent recourse mechanism to investigate and resolve an individual’s complaints and disputes. Commerce maintains a public website, [www.export.gov/safeharbor](http://www.export.gov/safeharbor), where it posts the names of companies that have self-certified to the Safe Harbor Frameworks. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor Frameworks.

TES provides business coaching services to franchisees. According to the Commission's complaint, TES has set forth on its website, [www.entrepreneursource.com](http://www.entrepreneursource.com), privacy policies and statements about its practices, including (1) statements related to its participation in the Safe Harbor Frameworks and (2) statements indicating that it is a licensee of the TRUSTe Privacy Program.

The Commission's complaint alleges that from March 2013 until February 2015 TES falsely represented that it was a “current” participant in the Safe Harbor Frameworks when, in fact, the company’s self-certifications had lapsed. The Commission’s complaint also alleges that during this same time period TES represented

that all Safe Harbor-related disputes would be settled by an “arbitration administered agency” such as the American Arbitration Association, that hearings would take place in Connecticut, and that the costs of arbitration would be shared equally by the parties. In fact, the independent recourse mechanism authorized under TES’s Safe Harbor certification was the European data protection authorities, which resolve Safe Harbor-related disputes at no cost to consumers and do not require in-person hearings. The Commission’s complaint alleges that these false representations are likely to deter EU and Swiss citizens from attempting to take advantage of the dispute resolution services offered by the company.

The Commission’s complaint further alleges that until February 2015, TES represented through statements in its online privacy policy that it was a current licensee of the TRUSTe Privacy Program, when, in fact, it was not a current licensee.

Part I of the proposed order prohibits TES from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework, the U.S.-Swiss Safe Harbor Framework, and the TRUSTe privacy programs. Part II of the proposed order also prohibits TES from misrepresenting in any manner, its participation in, or the rules, processes, policies, or costs of, any alternative dispute resolution process or service, including but not limited to, arbitration, mediation, or other independent recourse mechanism.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires TES to retain documents relating to its compliance with the order for a five-year period. Part IV requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part V

ensures notification to the FTC of changes in corporate status. Part VI mandates that TES submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order’s terms in any way.

By direction of the Commission.

Donald S. Clark,  
Secretary.

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